

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (STAMP) NO.23581 OF 2015

Abdul Reza Q. Nezhad.] ... Petitioner

Versus

Reza A. L. Saboonchi & Ors.] ... Respondents

Mr. Abdul K. N. Mulla for Petitioner.

Mr. M. L. Palan i/b Ms. Jayashree P. Thakkar for Respondent Nos.1 to 3.

CORAM :- M. S. SONAK, J.

DATE :- SEPTEMBER 10, 2015

P. C. :-

1. This petition challenges order dated 05/05/2015 by which the Division Bench of the Small Causes Court ('Appeal Court') had directed the eviction of the Petitioner from the suit premises.

2. Mr. Abdul K. N. Mulla, learned Counsel for Petitioner, submitted that in the plaint, there was no allegation whatsoever against the Petitioner (Defendant No.3). Further, the material on record establishes that one Nooruddin Abdul Rehman Tandel ('Tandel') was accepted as the lawful sub-tenant in respect of the suit premises. The material on record also establishes that the Defendant No.2 ('Merchant') and the Petitioner were caretaker and co-caretaker respectively in respect of the suit premises. Even the Appeal Court,

has not recorded any categorical finding that Merchant and Abdul were the sub-tenants in respect of the suit premises, rather, the Appeal Court has observed that their status was '*something else*'. In these circumstances, no decree of eviction should ever have been made in the absence of impleadment of Tandel who was a necessary party to the suit. That apart, the Small Causes Court had no jurisdiction whatsoever to make any decree of eviction against either the caretaker or a gratuitous licensee. The Trial Court had rightly dismissed the suit and the Appeal Court has clearly exceeded its jurisdiction in decreeing the suit.

3. Mr. M. L. Palan, learned Counsel for Respondent Nos.1 to 3, who are the trustees of M. A. Latif Saboonchi Trust ('landlord'), submitted that the original tenant Penkar as well as the Petitioner Abdul failed to step into the witness box. In matters of unlawful sub-letting, it is never possible for the landlord to plead or establish with precision, the relationship between the tenant and the persons who are inducted in possession of the suit premises. The onus is upon such inductees to explain their status. In the present case, the Petitioner has raised inconsistent defences and in any case, having failed to step into the witness box, has failed to prove any of them. In such circumstances, the decree of eviction was rightly made by the Appeal Court and there is no error of jurisdiction whatsoever.

4. Having heard the learned Counsel for parties, in my judgment, no case is made out to entertain the present writ petition.

In the plaint, there are averments to the effect that the original tenant Penkar had unlawfully sub-let the suit premises initially to Tandel and thereafter to some other person including Merchant. In the plaint, there are averments that there was a move to induct yet another third party in the suit premises, although such third party was reluctant to disclose his name or status. The averments to this effect are contained in paras 9 to 12 of the plaint. In these circumstances, it cannot be said that there are no averments whatsoever in the context of the Petitioner in the plaint. That apart, it is not as if, the Petitioner was deprived of any opportunity of defence in the context of vagueness of pleading on the part of the Plaintiff. The Petitioner has filed a detailed written statement in the matter. The Petitioner, apart from raising the defence of non-joinder of necessary party i.e. Tandel, has also set up a case that he was 'co-caretaker' of the suit premises along with Merchant. If the Petitioner was indeed serious about the defence raised, then it was for the Petitioner to have stepped into the witness box and made good the defence raised. The Petitioner having failed to do so, cannot, in this petition, complain that he was not at all the sub-tenant in respect of suit premises.

5. In matters of sub-tenancy, it is not possible for the landlord to establish with precision the relationship, if any, between the original tenant and the person now in occupation of the suit premises. These are obviously matters which are within the special knowledge of the tenant and such person. In the present case, specific defences were raised by both Merchant as well as the Petitioner.

Merchant did step into the witness box but was unsuccessful in making good her defence. Merchant has not questioned the decree of eviction made by the Appeal Court. The Petitioner failed to step into the witness box and considering that his plea was that he was 'co-caretaker' in respect of the suit premises, which plea, he has failed to establish, there is no case made out for exercise of supervisory jurisdiction.

6. In respect of the case that the Petitioner and Merchant were the caretakers in respect of the suit premises, reliance was placed upon an agreement at Exh.4, in which there was some mention about Merchant being appointed as caretaker in respect of the suit premise. The Appeal Court, upon consideration of the agreement, has rightly commented that the Merchant, in terms of the said agreement, had undertaken to pay compensation of Rs.200/- to Tandel and that it was really illogical that a caretaker should pay any amount in favour of the person, whose premises the caretaker was expected to care for. That apart, Merchant has not challenged the decree. The Petitioner who claims to be a co-caretaker along with Merchant, cannot, in any case, set up or expect to establish any better case. At the cost of repetition, it must be noted that the Petitioner having failed to step into the witness box, has not at all established that he was either a caretaker or a co-caretaker in respect of the suit premises. In these circumstances, there is neither any perversity nor any jurisdictional error in the making of the impugned eviction decree.

7. On the aspect of lack of jurisdiction, such issue would arise only if the Petitioner were able to establish that he was indeed a caretaker in respect of the suit premises. This, the Petitioner has clearly failed. The Petitioner cannot extract a stray sentence from the impugned order where the Appeal Court, in the context of the document at Exh.4, has observed that the document does not seem to be in respect of some caretaker, rather, is something else, and urge that the Appeal Court has accepted the case of the Petitioner that the Petitioner is a caretaker in respect of the suit premises.

8. The issue of non-joinder has also been considered by the Appeal Court in its proper perspective. The landlord had come up with a case that Tandel, who was, for some time occupying the suit premises as an unauthorized sub-tenant, had since vacated the suit premises. In these circumstances, Tandel did not continue to be a necessary party in the suit. The Petitioner as well as Merchant failed to establish that they were the caretakers inducted by Tandel. They also failed to establish that they were caretakers in respect of the suit premises. In these circumstances, the decree of eviction made by the Appeal Court cannot be said to be vitiated by perversity or jurisdictional error.

9. Accordingly, no case is made out to entertain the present Writ Petition. The Writ Petition is dismissed. There shall be no order as to costs.

10. At this stage, Mr. Mulla, learned Counsel for Petitioner, states that the Petitioner will like to take recourse against this order before the Hon'ble Apex Court and therefore, the decree of eviction be stayed for a period of three months from today.

11. Mr. Mulla states that the Petitioner is presently in possession of the suit premises and that within a period of one week, the Petitioner will file an undertaking in the Registry of this Court along with advance copy to the learned Counsel for Respondent-landlord that Petitioner will neither create any third party rights in the suit premises nor part with the possession thereof. If such undertaking is filed within a period of one week from today, the eviction decree shall not be executed for a period of two months from today. Copy of the undertaking to be furnished to the learned Counsel for Respondent-landlord before the same is filed in the Registry.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Order.